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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,104	04/24/2001	Fritz Magerl	HAH-PT003	6204

3624 7590 11/01/2007  
VOLPE AND KOENIG, P.C.  
UNITED PLAZA, SUITE 1600  
30 SOUTH 17TH STREET  
PHILADELPHIA, PA 19103

EXAMINER
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CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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11/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/701,104	MAGERL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alicia Chevalier	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3-8, 10, 12, 13, 15 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 15 is/are allowed.
- 6) ☒ Claim(s) 3-8, 10, 13 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **RESPONSE TO AMENDMENT**

1. Claims 3-8, 10, 12, 13, 15 and 19 are pending in the application, claims 1, 2, 9, 11, 14 and 16-18 have been cancelled.
2. Amendments to the claims, filed on August 22, 2007, have been entered in the above-identified application.

### ***REJECTIONS***

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

### ***Claim Rejections - 35 USC § 102***

4. Claims 3-8, 10, 13 and 19 rejected under 35 U.S.C. 102(b) as being anticipated by Ducheyne et al. (U.S. Patent No. 4,963,151).

Regarding Applicant's claim 19, Ducheyne discloses surgically implantable biocompatible component comprise a composite of polymer or ceramic material; reinforcing fibers, wherein at least some of the reinforcing fibers are X-ray absorbing reinforcing fibers distributed throughout the composite, wherein an orientation of the X-ray absorbing reinforcing fibers is tailored to a shape and application of the surgically implantable biocompatible component (1, 18) in a defined manner to provide X-ray visibility control for the biocompatible component, a concentration of the X-ray absorbing fibers is varied in different areas of the biocompatible component (*col. 6, lines 19-42*).

Regarding Applicant's claims 3 and 7, Ducheyne disclose the composite is prefabricated as a profile rod material further comprising carbon fibers, nonmagnetic material (*col. 10, lines 10-19*).

Regarding Applicant's claim 4, the limitation the polymer material is PAEK (poly-aryl-ether ketone) is optional since the use of a polymer is optional in claim 19.

Regarding Applicant's claims 5 and 6, Ducheyne discloses that the carbon fibers and the X-ray absorbing fibers are designed as continuous fibers and/or fibers with a length exceeding 3 mm and are enveloped by a matrix of the polymer or the ceramic material (*col. 10, lines 46-58*).

Regarding Applicant's claim 8, Ducheyne discloses that the x-ray absorbing fibers are made from tantalum (*col. 10, lines 25-35*).

Regarding Applicant's claim 10, Ducheyne discloses that the fibers are oriented differently depending on the longitudinally or transverse oriented alignment of the component (*see the figures*).

Regarding Applicant's claim 13, the stiffness of the connecting element is deemed capable of being varied by varying the orientation of fibers from a force application point toward a free end of the component.

***Allowable Subject Matter***

5. Claims 12 and 15 are allowed.

***ANSWERS TO APPLICANT'S ARGUMENTS***

6. Applicant's arguments in the response filed August 22, 2007 regarding the previous rejections of record have been considered but are moot since the rejections have been withdrawn.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

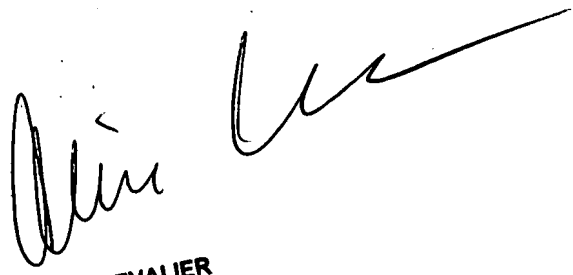
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac

10/29/07



**ALICIA CHEVALIER**  
**PRIMARY EXAMINER**